



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/796,697	03/09/2004	Benoit Abribat	U 0164-F04A	2889

23657 7590 11/18/2009
FOX ROTHSCHILD LLP
2000 MARKET STREET
PHILADELPHIA, PA 19103

EXAMINER

PRYOR, ALTON NATHANIEL

ART UNIT	PAPER NUMBER
----------	--------------

1616

NOTIFICATION DATE	DELIVERY MODE
-------------------	---------------

11/18/2009

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

ipdocket@foxrothschild.com

Office Action Summary	Application No. 10/796,697	Applicant(s) ABRIBAT ET AL.	
	Examiner ALTON N. PRYOR	Art Unit 1616	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 September 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 26,28-30,32-34,36,37 and 39-41 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 26,28-30,32-34,36,37 and 39-41 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>9/24/09</u> . | 6) <input type="checkbox"/> Other: _____ |

Art Unit: 1616

DETAILED ACTION

Applicant's arguments 9/22/09 and 9/24/09 have been fully considered but they are not persuasive. See discussion below. Previous rejections not addressed below have been withdrawn.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 26,28-30,32-34,36,37,39-41 are rejected under 35 U.S.C. 103(a) as being unpatentable over the combined teachings of Capuzzi et al (US 5905072) and Auda et al (US 6586366). Capuzzi et al teach adjuvants for microemulsion fungicidal compositions (abstract) comprising methyl esters of fatty acids, anionic surface active agents such as sulfosuccinates, at least one nonionic surface active agents such as alkyl polyglucosides, and at least one additional nonionic surfactant such as sorbitan esters of fatty acids (column 1, lines 38-67, column 2, lines 44-62). The adjuvant microemulsions may also contain additives such as antifreeze and antifoam agents (column 3, lines 18-23), and active agents such as phytodrugs, phyto regulators, weed killers, insecticides, and fertilizers (column 4, lines 35-38). Capuzzi et al. teach a method of treating plants with adjuvant composition for the purpose of controlling pests. Note, Capuzzi et al. do not teach the adjuvant composition specifically comprising methyl oleate and glycerol monooleate. However, the methyl esters of fatty acid taught

Art Unit: 1616

by Capuzzi et al embraces the methyl oleate compound recited in the claims and the nonionic surfactant taught by Capuzzi et al embraces the glycerol monooleate recited in the claims. In the absence of unexpected results for methyl oleate and glycerol monooleate in the adjuvant composition, it would have been obvious to one having ordinary skill in the art to include methyl oleate and glycerol monooleate in the adjuvant composition. One would have been motivated to do this since methyl oleate is a fatty acid methyl ester and glycerol monooleate is a nonionic surfactant.

Auda et al teach oil based emulsifiable concentrates and agrochemical formulations comprising at least one oil component, at least one saccharide surfactant, and at least one other nonionic surfactant (column 1, lines 9-15). When the composition contains water, it will form a microemulsion (lines 43-49). The oil component may be a mineral or vegetable oil, or a fatty acid ester such as methyl or ethyl laurate (lines 50-65). The saccharide surfactant may be an alkyl polyglucoside (column 2 lines 52-53). Other components may include antifoaming agents (column 3, line 35) and agrochemical agents such as herbicides, pesticides, insecticides, fungicides, or acaricides (lines 60-63), such as the herbicide glyphosate (column 5-6). et al. teach a method of treating plants with adjuvant composition for the purpose of controlling pests

One of ordinary skill in the art would be motivated to combine these references because they disclose the same adjuvant materials as having utility in making microemulsion agrochemical compositions wherein the composition can be applied to plants to control pests.

Art Unit: 1616

Thus it would have been prima facie obvious to the ordinary artisan at the time the invention was made to have combined applicants' oil, hydrophilic emulsifier, lipophilic co-emulsifier and customary additives into a single microemulsion composition because the prior art teaches that these components, and specific examples thereof as claimed herein, were known to be combinable in a single composition in order to produce a microemulsion composition which was useful for combining with agrochemicals.

Response to Applicants argument

The Applicants argue that Capuzzi makes use of an anionic surfactant selected from alkylbenzenesulfonates, alkylsulfonates, and their metal salts, in contrast to Applicants' instant claims. The Examiner argues that the "consisting essentially of" used in the claim 26 does not exclude the specifically named anionic surfactants disclosed in Capuzzi. Applicants have not shown that Capuzzi's anionic surfactants would materially impact the utility of the instant invention.

The Applicants argue that independent claim 26 is now limited to a water-soluble or substantially water-soluble agrochemical, whereas, Capuzzi employs water insoluble agrochemicals such as tetraconazole. The Examiner argues that tetraconazole is moderately water soluble meaning that tetraconazole meets the claim limitation of being a substantially water soluble pesticide as claimed (See attached PPBD for tetraconazole). Also note, instant claims recite, "said agrochemical comprises a water-soluble or substantially water soluble agrochemical." The "comprises" language allows the inclusion of water insoluble agrochemical as those recited in Capuzzi.

Art Unit: 1616

The Applicants argue that Capuzzi et al.'s anionic surfactants added to applicants' microemulsion would materially affect the emulsifying properties of the nonionic surfactant by lowering the hydrophilic-lipophilic balance (HLB), which would cause microemulsion disruption. The Examiner argues that Applicants provide no data to support this statement.

The Applicants argue that Auda et al. (used as 103 reference based on its filing date) teach water-in-oil compositions rather than oil-in-water compositions. The Examiner argues Auda et al. teach oil-in-water compositions at column 4 lines 9-14.

The Applicants argue that their adjuvant microemulsions are designed to combine with water soluble or substantially water soluble agrochemicals. This teaching of Applicants is not recited in the claims.

Applicants further argue that Auda et al.'s polyalkoxylated with an average of 2-40 alkylene oxide would position the HLB value to higher numbers, thereby shifting the emulsifiers outside of their lipophilic category. The Applicants argue that Auda et al.'s alkoxylated surfactants added to applicants' microemulsion would materially affect the emulsifying properties of the balance of nonionic surfactant by raising the hydrophilic-lipophilic balance (HLB), which would cause microemulsion disruption. The Examiner argues that Applicants provide no data to support this statement.

Applicants direct the Examiner's attention to Auda et al. page 1 line 25 – page 2 line 3, lines 11-14 to support that large amounts of alkoxylated nonionic surfactants are not favorable in instant invention, because said amounts yield a composition a) having poor biodegradability and b) that is phytotoxic to plants. Again, The Examiner argues

Art Unit: 1616

that Applicants provide no data to support this statement. The Examiner argues that the alkoxyated nonionic surfactant can be present in as little as 10 parts of the overall composition. Furthermore, at page 1 line 25 – page 2 line 3, lines 11-14 Auda et al. do not exclude the alkoxyated nonionic surfactant.

New 35 USC 103(a) Rejection

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 26,28-30,32-34,36,37,39-41 are rejected under 35 U.S.C. 103(a) as being unpatentable over the combined teachings of Capuzzi et al (US 5905072), Auda et al (US 6586366) and Foerster et al. (US 6255253; 7/3/01). Capuzzi et al teach adjuvants for microemulsion fungicidal compositions (abstract) comprising methyl esters of fatty acids, anionic surface active agents such as sulfosuccinates, at least one nonionic surface active agents such as alkyl polyglucosides, and at least one additional nonionic surfactant such as sorbitan esters of fatty acids (column 1, lines 38-67, column 2, lines 44-62). The adjuvant microemulsions may also contain additives such as antifreeze and antifoam agents (column 3, lines 18-23), and active agents such as phytodrugs, phyto regulators, weed killers, insecticides, and fertilizers (column 4, lines 35-38). Capuzzi et al. teach a method of treating plants with adjuvant composition for the purpose of controlling pests. Note, Capuzzi et al. do not teach the adjuvant composition comprising a water-soluble agrochemical, methyl oleate and glycerol monooleate.

Art Unit: 1616

However, the methyl esters of fatty acid taught by Capuzzi et al embraces the methyl oleate compound recited in the claims and the nonionic surfactant taught by Capuzzi et al embraces the glycerol monooleate recited in the claims. In the absence of unexpected results for methyl oleate and glycerol monooleate in the adjuvant composition, it would have been obvious to one having ordinary skill in the art to include methyl oleate and glycerol monooleate in the adjuvant composition. One would have been motivated to do this since methyl oleate is a fatty acid methyl ester and glycerol monooleate is a nonionic surfactant.

Auda et al teach oil based emulsifiable concentrates and agrochemical formulations comprising at least one oil component, at least one saccharide surfactant, and at least one other nonionic surfactant (column 1, lines 9-15). When the composition contains water, it will form a microemulsion (lines 43-49). The oil component may be a mineral or vegetable oil, or a fatty acid ester such as methyl or ethyl laurate (lines 50-65). The saccharide surfactant may be an alkyl polyglucoside (column 2 lines 52-53). Other components may include antifoaming agents (column 3, line 35) and agrochemical agents such as herbicides, pesticides, insecticides, fungicides, or acaricides (lines 60-63), such as the herbicide glyphosate (column 5-6). Auda et al. teach a method of treating plants with adjuvant composition for the purpose of controlling pests.

Foerster et al teach an agrochemical microemulsion comprising an alkyl(oligo)glycoside plus oil phase plus agrochemical (abstract). Foerster et al teach that the agrochemical is water insoluble (column 1 line 45 - column 2 line 45. Foerster et

Art Unit: 1616

al. teach that water soluble agrochemicals can be added to microemulsion (column 2 lines 46-50) Foerster et al teach that nonionic emulsifiers (lipophilic character) can be added to the microemulsion (column 4 lines 27-40). Foerster et al. teach a method of applying the microemulsion onto an agrochemical substrate (claim 10).

One of ordinary skill in the art would be motivated to combine these references because they disclose the same adjuvant materials as having utility in making microemulsion agrochemical compositions wherein the composition can be applied to plants to control pests.

Thus it would have been prima facie obvious to the ordinary artisan at the time the invention was made to have combined applicants' oil, hydrophilic emulsifier, lipophilic co-emulsifier and customary additives into a single microemulsion composition because the prior art teaches that these components, and specific examples thereof as claimed herein, were known to be combinable in a single composition in order to produce a microemulsion composition which was useful for combining with agrochemicals.

Telephonic Inquiry

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alton N. Pryor whose telephone number is 571-272-0621. The examiner can normally be reached on 8:00 a.m. - 4:30 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Johann Richter can be reached on 571-272-0646. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 1616

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Alton N. Pryor/
Primary Examiner, Art Unit 1616